

tion, House Bill No. 188, "An Act to provide for special terms of the District Court in the Twentieth Judicial District."

On motion of Senator McLeary, the rules were suspended, and Senate Bill No. 166, "An Act to provide for a special term of the District Court in Menard county, was taken up, and House amendments concurred in.

By leave, Senator Storey, Chairman of the Committee on Finance, submitted the following report:

*Hon R. B. Hubbard, President of the Senate:*

Your Committee on Finance have had under consideration House Bill No. 86, "An Act to make an appropriation of the Fourteenth Legislature for frontier defense, available for payment of deficiency for previous years for same purpose," and I am instructed by the committee to report the bill to the Senate with the recommendation that the same do pass.

STOREY, *Chairman.*

On motion of Senator Crain, the rules were suspended and Senate Bill No. 108, "An Act to regulate quarantine on the coast of Texas," taken up.

On motion of Senator Storey, the further consideration of the bill was postponed until Monday next, immediately after the morning call.

On motion of Senator Ford, the rules were suspended and his resolution with regard to the forfeited bond of Senator Burton, given for the appearance of the absconding witness of the Lunatic Asylum frauds, Green, was taken up, and on motion of Senator McLeary referred to Judiciary Committee No. 1.

On motion of Senator Stephens, the Senate adjourned until Monday morning at 10 o'clock by the following vote:

YEAS—Senators Ball, Blassingame, Brown, Douglass, Ford, Grace, Guy, Henry F. M., Hobby, Martin, Moore, Motley, Ripetoe, Stephens, Storey, Thompson—16.

NAYS—Senators Brady, Burton, Carroll, Crain, Edwards, Francis, Henry J. R., Ledbetter, McLeary, Terrell—10.

NOT VOTING—Senators Piner, Smith, Wortham, McCulloch—4.

#### FORTY-FIRST DAY.

SENATE CHAMBER, }  
AUSTIN, TEXAS, JUNE 5, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

On motion of Senator Terrell, the reading of the journal of Saturday was dispensed with and the same adopted.

On motion of Senator Grace, E. J. Chew, the Calendar Clerk, was excused on account of sickness.

The President, after reading its caption, signed Senate Bill No. 176, "An Act to provide for a special term of the District Court of the counties of Burnet and Menard."

Senator Crain introduced a bill entitled: "An Act to require the Court of Appeals to dismiss certain felony cases."

Read by caption and referred to Judiciary Committee No. 2.

Also, a bill entitled: "An Act fixing the time of holding District Courts in the Twenty-third Judicial District."

Read by caption and referred to Judiciary Committee No. 2.

Senator Smith introduced a bill entitled: "An Act to except Morris John, Spencer Perkins, and Tanner from the operation of Sub-division 4, Section 1, Article 6 of the Constitution of the State of Texas."

Read by caption and referred to Committee on Penitentiaries.

Senator Thompson introduced a bill entitled: "An Act to prevent the issuance of false receipts and bills of lading, and to punish fraudulent transfers of property by warehousemen, wharfingers and others."

Read by caption and referred to Judiciary Committee No. 2.

Senator Crain introduced a bill entitled, "An Act to establish a State detective force, and to provide for the government and regulation of the same."

Read by caption and referred to Committee on State Affairs.

Senate Bill No. 180, "An Act authorizing quarantine on the coast of Texas, and elsewhere within the State," being the unfinished business, was taken up, read second time, amendments of committee adopted and bill ordered engrossed.

On motion of Senator Hobby, the rules were suspended, to place the bill on its third reading, by the following vote:

YEAS—Senators Ball, Blassingame, Burton, Crain, Douglass, Francis, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Moore, Motley, Piner, Ripetoe, Stephens, Terrell, Thompson, Wortham—24.

NAYS—None.

NOT VOTING—Senators Brady, Brown, Carroll, Edwards, Ford, Smith, Storey—7.

Bill read third time and passed by the following vote:

YEAS—Senators Blassingame, Brown, Burton, Carroll, Crain, Douglass, Francis, Grace, Guy, Henry J. R., Hobby, Ledbetter, McLeary, McCormick, McCulloch, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Terrell, Thompson, Wortham—24.

NAYS—Senators Ball, Henry, F. M.—2.

NOT VOTING—Senators Brady, Edwards, Ford, Martin, Storey—5.

On motion of Senator Guy, the rules were suspended and Senate Bill No. 40, entitled, "An Act to amend an act entitled, 'An Act to branch the Supreme Court of the State of Texas,'" approved February 27, 1874, was taken up and made the special order for to-morrow immediately after the morning call.

Substitute for Senate Bill No. 13, entitled, "An Act concerning mills and millers, and to regulate the taking of tolls," was taken up and read second time.

The amendment of Senator Edwards, pending on adjournment on Friday last, "In Section 6, strike out all after the word, 'toll,' in line 6," was considered and lost.

Senator Burton offered the following amendment:

Amend Section — by striking out, "one-sixth," and inserting, "one-fifth; *provided*, that this shall only apply to corn."

Lost.

Senator Francis offered the following amendment:

In Section 6, insert, after the word, "toll," "*provided*, that mills operated by horses or oxen may take one-fourth."

Adopted.

Senator Wortham offered the following amendment:

Amend by striking out all after the word, "committed," in Section 8, line 12.

Senator Crain offered the following substitute for Senator Wortham's amendment:

Strike out all after the word, "prosecution," in Section 8, line 9.

Lost.

Senator Wortham's amendment put and lost.

Senator Piner offered the following amendment:

Amend by striking out all after the word, "thereof," in Section 4, line 7.

Senator Edwards offered a substitute for Senator Piner's amendment, which was accepted, and the amendment as substituted adopted.

Senator Stephens moved the previous question, which was sustained; and the main question, which was the engrossment of the bill, was ordered.

Bill engrossed by the following vote:

YEAS—Senators Blassingame, Carroll, Douglass, Francis, Guy, Henry F. M., Martin, McCulloch, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Thompson—15.

NAYS—Senators Ball, Brown, Edwards, Grace, Henry J. R., Hobby, Ledbetter, McLeary, McCormick, Terrell, Wortham—11.

NOT VOTING—Senators Brady, Burton, Crain, Ford, Storey—5.

Senator Grace, Chairman of Committee on Enrolled Bills, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Enrolled Bills have carefully examined, compared and found correctly enrolled Senate Bill No. 166, entitled, "An Act to provide for a special term of the District Court in the counties of Burnet and Menard." The same has been properly signed and presented to the Governor this day at 11 o'clock A. M. for his approval.

GRACE, *Chairman.*

The hour for the special order having arrived, Senate Bill No. 119, "An Act to regulate proceedings in the County Court pertaining to the estates of deceased persons," the Senate went into Committee of the Whole in the consideration of the aforesaid bill.

Senator Smith was called to the chair.

#### IN SENATE.

Senator Smith, Chairman of the Committee of the Whole, reported that they had had under consideration for some time Senate Bill No. 119, "An Act to regulate proceedings in the County Court pertaining to the estates of deceased persons," and was instructed by the Committee to report the bill back to the Senate with various amendments, and recommend their adoption.

On motion of Senator McLeary the amendments of the Committee were adopted.

Amendments adopted in the Committee of the Whole:

In Section 1, lines 1 and 2, strike out down to the word, "wills," in line 2, and insert the following:

"SECTION 1. *Be it enacted by the Legislature of the State of Texas, That* there shall be established in each organized county in this State a County Court, which shall be a court of record, and shall have the gen-

eral jurisdiction of a probate court. Said court shall consist of a County Judge who shall possess the qualifications, be elected and hold office as prescribed by the Constitution. The jurisdiction of said court shall be exercised as provided in this act, and."

In Section 1, line 5, after the word, "granted," insert the word, "first;" after the word, "State," in line 7, insert, "second;" after the word, "died," in line 12, insert, "third;" in line 16, strike out, "but," and insert, "fourth."

Add to Section 1, the following: "And the probate of wills and grant of letters of administration, in any other than the proper county, shall be void."

In Section 1, line 6, after the word, "fixed," insert the word, "place."

Add to Section 14: "*Provided*, that said husband and wife have not waived their right."

Amend Section 16 by adding the following: "And if said executor or executrix, whether he or she be a resident or non-resident, if no objection be made by the creditors of said testator, shall have authority to sell and convey any property belonging to the estate of his testator that he may deem necessary, without any action of the County Court."

The following was substituted for Section 19:

"SEC. 19. Whenever an executor or administrator has been qualified in the manner required by this act, the certificate of the Clerk of the Court, attested by the seal of said Court, as to the qualification of said executor or administrator, shall be sufficient evidence of such appointment and qualification, when it shall be necessary to make proof of such fact."

In Section 26, line 18, strike out the word, "they," and insert, "administrators."

In Section 29, line 45, after the word, "administrator," insert, "or if no one has qualified as herein provided, into the court, and the Clerk shall give a receipt for the same."

In Section 30, line 6, after, "Judge," insert, "any officer authorized to administer oaths," and in line 14 of same section, strike out, "as the case may be."

In Section 31, line 4, after, "Judge," insert, "or any officer authorized to administer oaths."

In Section 33, line 7, after, "letters," insert "or before his shall have been revoked for a failure to do so within the time allowed."

In Section 34, strike out in line 14, "and scrawls;" in line 15, "and seals," after "A, B, C, D, E and F."

Amend same Section by inserting in line 7, after (blank county), "or his successor in office."

Amend Section 35, by striking out the word, "administrators," in second and third lines, and also striking out the word, "administratrix," in line 11, and striking out, "jointly," in line 13, and insert in lieu thereof, "*as a femme sole*;" strike out also the words, "and her husband," in lines 12 and 13.

In Section 35, insert after the word, "Judge," in line 7, the words, "or Clerk;" also, after the word, "court," in line 7, insert the words, "or any Notary Public of the county."

Amend Section 36, in line 7, by inserting after the word, "Judge," the words, "or Clerk;" and after the word, "court," in line 8, insert the words, "or any Notary Public of the county."

Add to Section 38, "*provided*, that the administrator or executor shall pay all the cost of this proceeding when the bond is insufficient."

Add to Section 38, "and said administrator or executor shall not pay out any money or make any sales after said service upon him, until his new bond is approved."

The following is a substitute for Section 50:

"SEC. 50. If there be a plantation or a manufactory belonging to the estate, and the disposition thereof be not specially directed by will, and if the same be not required to be at once sold for the payment of debts, it shall be the duty of the executor or administrator to carry on the plantation or manufactory, or rent the same, as shall appear to him to be most for the interest of the estate. In coming to a determination, he shall take into consideration the condition of the estate, and the necessity that may exist for future sale of such property for the payment of claims or legacies; and shall not extend the time of renting or hiring any of the property beyond what may consist with the speedy settlement of the estate; and any one who is interested in the estate may, upon good cause shown, after citation to the executor or administrator, obtain an order controlling his action in this particular."

At the end of Section 51, insert, "provided the executor or administrator may rent or hire privately, but shall be held or required to show, to the satisfaction of the judge, that private renting was advantageous to the estate."

In Section 56, line 12, after, "one," strike out all down to, "either," in the line 13, and insert: "*Provided*, that in case the widow is not the mother of said minor children, the portion of said allowance necessary for the support of such minor children, should be paid to their guardian, in case they have any such guardian, otherwise to be paid to said widow."

In Section 57, line 5, insert before, "children," the word, "minor," and after the word, "children," insert the words, "and unmarried daughters remaining with the family." Strike out all after the word, "case," in line 11, down to the word, "it," in line 13, and insert, "the deceased shall not be possessed of a homestead," and add to the end of the section, "*provided*, that the allowance for a homestead shall not be for more than two thousand dollars."

Section 59, at the end of the section add, "*provided*, that if the executor or administrator absent himself from the State or county, the time of such absence shall not be computed in estimating the twelve months in which claims against the estate shall be presented."

In Section 61, line 18, after "seal," insert, "or Commissioner of Deeds and Notaries Public for this State."

In Section 63, line 13, after "Judge," insert, "within three months, if said County Judge be not absent from the State or county."

At the end of Section 63 insert, "*provided*, that when a claim has been allowed by the executor or administrator, and approved by the County Judge, the owner or holder thereof shall, within ten days thereafter, cause a memorandum of the amount, date of claim, and date of allowance and approval recorded in the office of the County Clerk, on the claim docket, a book for which purpose shall be kept by the Clerk."

In Section 64, line 15, after the word, "administrator," strike out the word, "shall," and insert, "may for willful abuse."

In Section 66, line 21, after "letters," insert, "and fine him in a sum not to exceed one hundred dollars; said fine to be remitted only on good cause being shown for said failure."

Add at the end of Section 66, "*provided*, that before any judgment imposing a fine upon such executor or administrator shall be made final, such executor or administrator shall be served with notice."

In Section 67, line 35, after the word, "section," strike out the word, "shall," and insert, "may, for cause;" and in line 36, after the word, "Judge," strike out the word, "without," and insert, "with due."

In Section 69, between lines 5 and 6, insert, "nor to any claim that accrues against the estate after the granting of letters testamentary or of administration, for which the executor or administrator has contracted."

In Section 70, line 21, after "just," insert, "and the substance of the testimony, on which the claim was established, shall be taken down in writing, and be certified to by the Judge and filed with the Clerk among the papers of the estate at the time of such approval."

In Section 73, at the end, add, "*provided*, the executor or administrator may sell at public or private sale, and for cash, or on credit not exceeding six months, any personal property belonging to the estate, that is perishable or liable to waste. And he shall keep a true account of the sales made, making a list thereof, specifying each article sold, the price for which it was sold and the name of the purchaser; and he shall be responsible for the sales having been made at a fair price, and the circumstances authorizing such sale."

At the end of Section 74 add, "*and provided, further*, that the executor or administrator may sell the same without an order of court."

In Section 83, line 16, insert after "court," the words, "or County Court."

In Section 86, line 13, after "mortgage," insert, "and file the same for record before delivery of the deed."

In Section 83, line 10, strike out "five," and insert, "ten per cent."

Add to Section 57, "*provided*, that nothing in this section shall be construed to in any way impair or defeat the vendor's lien on the homestead or any other land, or any lien held by mechanics for work and material furnished in improvements on real estate; but if the estate is insolvent, the costs of enforcing the lien only may be paid out of the proceeds of the property on which the lien existed."

In Section 89, line 6, insert, "the expense of enforcing said lien in case the estate is insolvent."

In Section 89, after "of," in line 12, insert, "the expense of enforcing said lien, in case the estate is insolvent."

Add to Section 89: "And in case of the sale of mortgaged property to satisfy the mortgage, there be not money enough to pay the mortgaged debt in full, then the balance unpaid shall stand as any other claim against the estate, to be paid in due course of administration."

In Section 90, line 2, the word, "section," should read, "sections."

In Section 97, line 10, insert the word, "certified," after, "copy."

In Section 100, line 10, after, "liable," strike out down to the word, "to," in line 11, and insert, "on his official bond;" and at the end of the section, add, "against said executor or administrator and the sureties on his official bond."

In Section 103, line 6, strike out, "real estate," and insert, "property."

In Section 104, line 40, strike out, "shall," and insert, "may."

Add to Section 106, "*and provided*, that whenever any testator has by will instructed that no action be had in the courts in the settlement of his estate, and said testator does not in said will distribute his estate, or provide a means of partitioning the same, the executor may, if he desires, file his final account and vouchers, as provided in this act for administrators in the court of the county in which the will was probated, and ask partition and distribution of the estate, and the same shall be partitioned and distributed in the manner herein provided for in case of ordinary administration."

In Section 120, line 1, after, "executors," add the words, "except when otherwise provided by will of the testator."

Amend, in Section 121, line 2, by striking out the words, "of probate."

In Section 124, line 7, after, "administration," add, "*provided*, that no Commissioners shall be allowed for money received which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs and legatees as such."

In Section 124, strike out all after line 14 of this section.

Amend Section 125 by inserting in line 9, after the word, "shall," the words, "*provided*, that the court approve said receipts, or the account filed."

At the end of Section 125, add, "*and provided, further*, when any person holding an allowed and approved claim against the estate, does not come forward to receive payment for the same, the administrator or executor may deposit the money for the payment of said claim with the Clerk of the County Court, and take his receipt therefor."

Amend Section 127, line 20, by inserting after, "equal to," the words, "double the."

Section 137, line 5, after the word, "he," insert, "and his sureties on his official bond;" and after, "he," in line 9, insert, "and his sureties on his official bond."

Amend Section 139, line 6, by inserting, after the word, "offenses," the words, "except in cases provided for in Section 130 of this act."

Amend Section 141, line 7 by inserting after, "in," the word, "suits."

In Section 143, between lines 16 and 17, insert, "for such sum as the County Judge may require."

Amend by adding to the bill the following sections:

"SEC. 147. That all laws and parts of laws in conflict with the provisions of this act are hereby repealed.

"SEC. 148. There shall be begun and holden at the court-houses of the respective counties throughout the State, a term of the County Court on the third Mondays in January, March, May, July, September and November of each year, for the transaction of all probate business provided for in this act.

"SEC. 149. All proceedings in relation to the settlement, partition and distribution of estates of deceased persons, remaining unsettled in the District Courts of this State, shall be transferred to the County Court of the county having jurisdiction thereof, and shall be conducted and concluded under the provisions of this act."

SEC. 115. The following is substituted for Sections 115, 116, 117, 118, 119 and 120 of the printed bill:

"SEC. 115. Where the wife dies, her husband surviving, administra-

tion is unnecessary, except as to any separate estate which may have belonged to her. The husband continues to have the same power of disposition over the community property which he possessed during the continuance of marriage. But he shall be required to return an inventory and appraisement of all such property, and to file a bond, signed by two good and sufficient sureties, to be approved by and payable to the County Judge in an amount equal to the value of the whole of the community property, to the effect that he will faithfully administer the same and pay over one-half of the surplus after the payment of the debts with which the whole is properly chargeable, to such person or persons as shall be entitled to receive it. And he shall be liable in such case to be called to account at any time after one year from the date of the bond; which bond shall be sueable, recoverable, and in every other respect the same as the bond of an administrator. The surviving wife may retain the exclusive management and control of the community property of herself and her deceased husband, in the same manner and subject to the same rights, rules and regulations as provided above, until she may marry again; but, upon a second marriage, she shall cease to have such control and management of said estate or the right to dispose of the same, as above provided; and said estate shall be subject to administration as in other cases of deceased persons' estates.

The following was adopted as Section 116:

"SEC. 116. Any person capable of making a will, may so provide by his or her will that no other action shall be had in the County Court in relation to the settlement of his or her estate, than the probating and registration of his or her will, and the return of an inventory of the estate; and in all such cases any person having debt or claim against said estate, may enforce the payment of the same by suit against the executor of such will, and when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of such executor; *provided*, that no such executor shall be required to plead to any suit brought against him for money until the expiration of twelve months from the date of the probate of such will. But in cases where no bond and security has been required of such executor, at the time of the probate of such will, any person having a debt, claim or demand against said estate, to the justice of which oath has been made by himself, his agent or attorney, or any person having an interest therein, whether in person or as representative of another, may, by complaint, filed in the court where such will was probated, cause such executor to be cited to appear before such court at some regular term, and on making it appear to the satisfaction of said court that such executor is wasting or misapplying said estate, and that thereby said creditor may probably lose his debt, or such person his or her interest in the estate, it shall be the duty of said court to order such executor to give bond, with two or more good and sufficient sureties, for an amount equal to double the full value of said estate, to be approved by, and payable to the County Judge of the county, conditioned that said executor will well and truly administer such estate and that he will not waste, mismanage or misapply the same, which bond may be recovered upon as other bonds given by executors and administrators; and should such executor fail to give such bond within ten days after the order requiring

him to do so, then it shall be the duty of the County Judge to remove him from the executorship of such estate, and to appoint some competent person in his stead, whose duty it shall be to administer said estate according to the provisions of such will; and who, before he enters upon the administration of said estate, shall be required to give such bond as herein above provided for; and if such will does not distribute the entire estate of testator, or provide a means for partition of said estate, the executor shall have the right to file his final account in the court in which the will was probated, and ask partition and distribution of the estate, and the same shall be partitioned and distributed in the manner provided herein for the partition and distribution of estates administered according to the provisions of this act.

Adopted.

Senator Moore offered the following resolution:

WHEREAS, In view of the necessity of general laws, for the purpose of carrying out the requirements of the new Constitution, and as we are now far advanced in the session, and the country is looking to us successfully to carry out this end, and believing this to be the first, and great object for which we have been convened:

*Resolved*, That this Senate will adapt our present legislation to the accomplishment of this great result, and in preferment to all others.

*Resolved*, That the House of Representatives be, and are hereby respectfully requested to conform their action with the object of the foregoing resolution.

Adopted.

On motion of Senator McLeary, the Senate adjourned until to-morrow morning at 9 o'clock.

#### FORTY-SECOND DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, June 6, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

Senator Stephens presented the petition of numerous citizens of Palo Pinto county asking that no extension be allowed the Texas and Pacific Railroad, unless requiring the company to complete said road eighty miles beyond its present terminus, at Eagle Ford, to the Brazos river within the next twelve or eighteen months at most; and showing that the State is greatly interested in this matter.

Read and referred to Committee on Internal Improvements.

Senator Guy presented the petitions of the members of the bar from Kaufman, Canton, Marshall, Cleburne, Sherman, Cook county and Parker county, asking that a branch of the Supreme Court be located at Dallas city, in Dallas county.

Ordered to lie on the table, subject to call.

Senator Piner, Chairman of Committee on Judiciary No. 2, submitted the following reports:

*Hon. R. B. Hubbard, President of the Senate:*

Your Judiciary Committee No. 2, to whom was referred Senate Bill No. 160, entitled, "An Act to define and punish vagrancy," have had